

Book Review:

‘IPR Bride & Competition Groom’

Author: Dr. S. Chakravarthy

Critical Analysis of interplay of competition law and IPR

The connection between intellectual property rights (IPR) and competition laws is age old, and the discussion around the same has gathered new pace due to the rise of a service economy. The aim of the said two laws is somewhat at loggerheads where on one side IPR seeks to provide exclusive rights over a property to a certain entity, however the latter seeks to promote competition in terms of accessibility and opportunity to all the developers in a market. Such goals are also reflected in respect of the bare text of the laws where the Indian competition Act puts only ‘reasonable’ restrictions of the jurisdiction of the Competition Commission of India to adjudicate on IP case matters. The landmark judgment in this context has been the National Company Law Appellate Tribunal’s ruling in K Sera Sera case where it overturned the CCI’s order twice in a single matter. The book written by Dr. S. Chakravarthy makes a unique addition to this knowledge pool where he claims that the two laws rather complement each other and that there is no need to see any contradiction while interpreting them.

Dr. Chakravarthy is now associated with the field of competition laws for more than two decades, and his expertise in the subject is widely known. He was one of the architects of the Indian Competition Act, 2002. Mr. Chakravarthy, through this book, asserts that the goals of these laws are quite same, i.e. promote innovation and consumer interest in an economic framework, even though the methodologies adopted under the said laws are quite different.

Few conflicting areas can be sub-categorized as follows:

- 1) Patents and Competition Law
 - Abuse of market power via refusal to give license
 - Abuse of Dominance via Misuse of Regulatory Procedures
 - Abuse of Dominance via Excessive Pricing
 - Anticompetitive Agreements
- 2) Trademark and Competition Law
 - Anticompetitive restrictive agreements
- 3) Copyright and Competition Law

The Competition Act, 2002 briefly addresses this area of conflict through section 3(5) of the Act, however an anomaly with a such provision is that it is not applicable for section 4, i.e. abuse of dominant position., This is exactly where Dr. Chakravarthy work contributes where he suggests through the Chapter 4 how different jurisdictions have taken various initiatives to address this overlap. Such an approach is consistent with the recommendations by the Competition Law Review Committee, 2019 and subsequently being enacted by the MCA in the Competition Amendment Bill, 2020 where a similar exception like that of section 3(5) has been carved out in abuse of dominant position cases.

The book makes quite a nuanced attempt to explain the questions related to this interface when it comes to the digital markets as well. In chapter 3, Mr. Chakravarthy has well explained the concepts of ownership of big data, allied competition concerns and how do the same affect the articulation of the Indian Competition Act, 2002. All such topics are well substantiated through case laws thereby giving a perspective to the reader.

Lastly, the book deals with the crux of the debate and that is to address the international laws and agreements which exist between the countries and largely guide the IP regime through TRIPS. He addresses TRIPS Agreement as “Capsule A”, Compulsory Licensing as “Capsule B” and WTO Agreements and Dispute Settlement System as “Capsule3”. Through this research, Mr. Chakravarthy conclusively states that the goals of both the laws are same and the need of the hour is to look for harmonious interpretation.

Overall, the book is a must read for those who are interested in any of the two subjects and/or interface between the two operating in an economic framework.

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Book Details :

Book Name	: IPR Bride & Competition Groom
Author Name	: Dr. S. Chakravarthy
Reviewer Name	: Dr. Abha Yadav
Publisher Name	: Administrative Staff College of India
Book Year	: 2020
Book Price	: Rs. 599/-
Book Pages	: 423 pages